

19 November 1970

MEMORANDUM FOR THE RECORD

SUBJECT: Equal Employment Opportunity

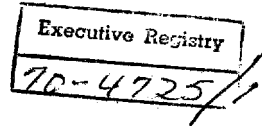
1. The meeting of the Executive Officers Group on 19 November 1970 was addressed by Mr. Condon of HUD. He gave a chronological account of the recent experiences of HUD in the field of Equal Employment Opportunity.
2. The opening event was the attendance by Mr. Sterling Tucker, a well-known black militant, at a meeting of HUD employees in a HUD conference room to which he had not been invited. He made charges of racism and discrimination, which stirred up considerable emotion and received widespread publicity. This was followed by organized groups invading various senior HUD officers' offices, including pursuing the Secretary into an elevator. While these were union groups, they were definitely organized by outside militants who either spoke for the union rank and file or incited them to speak. Various attempts were made to meet with union representatives on an orderly basis, but the meetings degenerated, and interestingly enough the main vituperation was directed against a black Assistant Secretary, Samuel J. Simmons. Mr. Condon said he personally was not singled out. Again, the instigation seemed to have come from outside militant black leaders.
3. Mr. Condon's analysis was that the basic problem was all too common throughout Government, where as a rule the majority of blacks employed are in routine, manual jobs

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| Remarks: <p>Janet:</p> <p>I have advised Mr. Parker's office that Mr. Houston will substitute for Colonel White. As I mentioned to you, Mr. Condon (HUD) and a HUD Personnel Officer will discuss HUD's relations with militant groups, with the Government Employees United Against Racial Discrimination, and others such as the Washington Area Construction Task Force, the Washington Urban League, the Urban Law Institute, etc.</p> <p>[REDACTED]</p> | | | |
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503



October 28, 1970

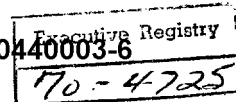
MEMORANDUM TO MEMBERS OF THE EXECUTIVE OFFICERS GROUP

SUBJECT: Luncheon Meeting of the Executive Officers Group,
12:00 noon, Thursday, November 19, 1970, at the
Officers Club, Fort McNair

Since the planned meeting day falls on Veteran's Day, the
November luncheon meeting of the Executive Officers Group
will be held Thursday, November 19, 1970, at 12:00 noon,
at the Officers Club at Fort McNair. Entrance to Fort
McNair is at 2nd and P Streets, S.W. Please let my office
know whether you will attend.

A handwritten signature in cursive script that reads "Charles F. Parker".

Charles F. Parker
PHONE: 395-3894
(Code 103, ext. 3894)



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

September 11, 1970

Mr. L. K. White
Executive Director-Controller
Central Intelligence Agency
Washington, D.C.

Red, at the Charlottesville meeting last spring, I asked Bob Froehlke to chair a committee made up of Les Condon, Leo Pellerzi and himself to determine the direction the Executive Officers Group should be moving during the coming year.

Here is that report.

In view of the recommendations in the Froehlke-Condon-Pellerzi report, I am asking the first person named opposite the month to serve as chairman of the program committee for that month. For example, Froehlke will serve as chairman in October, Condon in November, etc.

It is the plan that the committee will have full responsibility as outlined under item 4 in the Froehlke-Condon-Pellerzi report; that is, responsibility for selecting a subject, developing a program, and for arranging for the meeting.

It has already been determined that the October meeting will be a social event for Executive Officers and wives at the Officers Club, Bolling Air Force Base, Bolling Field, at 7:00 p.m. on October 7.

That means that the next regularly scheduled meeting will be on the second Wednesday in November, the next one on the second Wednesday in January, the next one on the second Wednesday in February, etc., on a subject and with the resource people and at a place determined by the panel.

If you have any problems in connection with your part of this scheme, please call Charles F. Parker, Code 103, Extension 3894.

Sincerely,

Joseph M. Robertson
Assistant Secretary for Administration
(Chairman, Executive Officers Group)

Attachments

EXECUTIVE OFFICERS GROUP

Suggested Panel Chairmen

| | |
|----------------------|---|
| September (in house) | Rosen, CSC, Chairman Dean, DOT Hargrove, PO |
| October (outside) | Froehlke, DOD Posner, USIA Wilson, VA |
| November (in house) | Condon, HUD Connell, Army Meyer, State |
| January (outside) | Jobe, Commerce Lang, Air Force Johnson, GSA |
| February (in house) | Pellerzi, Justice Cassidy, OEO Dwinell, AID |
| March: | Charlottesville Conference |
| April (outside) | Malek, HEW White, CIA Sisco, NSF |
| May (in house) | Dunn, Interior Moritz, NASA Brown, AEC |

EXECUTIVE OFFICERS GROUP

Program Committee Recommendations
for Washington Meetings

Committee Members: Robert Froehlke, Lester Condon, Leo Pellerzi

1. Hold regularly scheduled meetings every even numbered month, on a set date (e.g., second Wednesday), except in a month in which there is an out-of-town meeting.
2. Hold other meetings, as requested by three or more members, when appropriate subjects arise. Hold them on odd numbered months if appropriate.
3. Luncheon meetings be held in Government facility, such as Bolling Air Force Base.
4. Three members of Executive Officers Group be named co-chairmen for each scheduled meeting -- usually one from a domestic, defense, and central staff agency -- to select subject from among those proposed by members and develop program for meeting.
5. Meeting subjects should be varied, alternating between "in-house" and "outside" program subjects.
6. Key purpose of meetings should be to foster and cement relationships between members and with key officials of central agencies and the hill. We should point out to those officials the potential for the furtherance of their programs in a more effective informal relationship with the group.
7. "In house" program suggestions:
 - . Individual meetings with John Ehrlichman and the heads of each of the central agencies (Staats, Kunzig, Hampton) and each should have a standing invitation to attend all meetings.
 - . Work stoppages (CSC, Justice, Labor)
 - . Defense "phasing out"; cooperation with civilian agencies re: utilization of personnel and property.
 - . Community relations
 - . Decentralization
 - . Model cities
 - . Training

8. "Outside" program suggestions:

- . Union-management relations (Griner and/or Wolkimer)
- . Youth programs (Alexander Heard)
- . Mayor or Governor (Luger, Love)
- . ACLU representative

9. At first meeting in September co-chairmen be named for each regularly scheduled meeting.

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satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.

(b) An agency may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, or, in the case of a substitute employee in the postal field service, from a period during which, except for absence on funeral leave, the employee would have worked.

PART 713—EQUAL OPPORTUNITY

Subpart A [Reserved]

Subpart B—Equal Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

- Sec.
- 713.201 Purpose and applicability.
- 713.202 General policy.
- 713.203 Agency program.
- 713.204 Implementation of agency program.
- 713.205 Commission review and evaluation of agency program operations.

AGENCY REGULATIONS FOR PROCESSING COMPLAINTS OF DISCRIMINATION

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- 713.212 Coverage.
- 713.213 Precomplaint processing.
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APPEAL TO THE COMMISSION

- 713.231 Entitlement.
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- 713.241 Reports to the Commission.

Subpart C—Minority Group Statistics System

- 713.301 Applicability.
- 713.302 Agency systems.

Subpart D—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap

- 713.401 Equal opportunity without regard to politics, marital status, or physical handicap.

AUTHORITY: The provisions of this Part 713 issued under 5 U.S.C. 1301, 3301, 3302, 7151-7154, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306, E.O. 11478; 3 CFR, 1969 Comp., unless otherwise noted.

Subpart A [Reserved]

Subpart B—Equal Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

§ 713.201 Purpose and applicability.

(a) *Purpose.* This subpart sets forth the regulations under which an agency shall establish a continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission will review an agency's program and entertain an appeal from a person dissatisfied with an agency's processing of his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

(b) *Applicability.* (1) This subpart applies (i) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

[34 F.R. 5367, Mar. 19, 1969, as amended at 34 F.R. 14023, Sept. 4, 1969]

§ 713.202 General policy.

It is the policy of the Government of the United States and of the government of the District of Columbia to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency. (E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R. 14023, Sept. 4, 1969]

§ 713.203 Agency program

The head of each agency shall exercise personal leadership in maintaining, and carrying out, a continuing affirmative program to promote equal opportunity in all aspects of agency personnel practice in the employment, advancement, and promotion of employees. Under the program, an agency shall, to the extent possible:

(a) Provide sufficient personnel to administer its equal opportunity program in a positive manner;

(b) Conduct a continuing program to eradicate every form of discrimination based upon religion, sex, or national origin; the agency's personnel policies and working conditions; disciplinary action against those who engage in discrimination;

(c) Utilize to the fullest the present skills of employees, including the redesigning of jobs so that tasks not fully utilized of skills are concentrated in jobs requirements;

(d) Provide the maximum opportunity to employ their skills through on-the-job work-study programs, and other measures so that they are at their highest potential in accordance with their abilities;

(e) Communicate the employment opportunity program and its employee sources of job candidates to race, color, religion, sex, origin, and solicit their assistance on a continuing basis;

(f) Participate at the same level with other employers, universities, and private groups in cooperative efforts to improve employment and community conditions; employability;

(g) Review, evaluate, and improve managerial and supervisory practices in such a manner as to continue affirmative action, vigorous enforcement of equal opportunity, and training, and advise and supervisors to assist in standing and implementing

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§ 713.204

§ 713.203 Agency program.

The head of each agency shall exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote equal opportunity in every aspect of agency personnel policy and practice in the employment, development, advancement, and treatment of employees. Under the terms of its program, an agency shall, to the maximum extent possible:

(a) Provide sufficient resources to administer its equal employment opportunity program in a positive and effective manner;

(b) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, or national origin, from the agency's personnel policies and practices and working conditions, including disciplinary action against employees who engage in discriminatory practices;

(c) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

(d) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(e) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(f) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;

(g) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the

equal employment opportunity policy and program;

(h) Provide recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal employment opportunity;

(i) Inform its employees and recognized employee organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation;

(j) Provide for counseling employees and applicants who believe they have been discriminated against because of race, color, religion, sex, or national origin and for resolving informally the matters raised by them;

(k) Provide for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, or national origin; and

(l) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort.

(E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R. 14023, Sept. 4, 1969]

§ 713.204 Implementation of agency program.

To implement the program established under this subpart, an agency shall:

(a) Develop the plans, procedures, and regulations necessary to carry out its program established under this subpart;

(b) Appraise its personnel operations at regular intervals to assure their conformity with the policy in § 713.202 and its program established in accordance with § 713.203;

(c) Designate a Director of Equal Employment Opportunity, and such Equal Employment Opportunity Officers and Equal Employment Opportunity Counselors as may be necessary, to assist the head of the agency to carry out the functions described in this subpart in all organizational units and locations of the agency. The functioning of the Director of Equal Employment Opportunity, the Equal Employment Opportunity Officer, and the Equal Employment Opportunity Counselor shall be subject to review by the Commission. The Director of Equal Employment Opportunity shall be under the immediate supervision of the head of his agency, and shall be given the authority necessary to enable him to carry out his responsibilities under the regulations in this subpart;

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(d) Assign to the Director of Equal Employment Opportunity the functions of:

(1) Advising the head of his agency with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the policy in § 713.203 and the agency program required to be established under § 713.203;

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and improve the agency's program for equal employment opportunity;

(4) Providing for counseling, by an Equal Employment Opportunity Counselor, of any aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under § 713.214;

(5) Providing for the receipt and investigation of individual complaints of discrimination in personnel matters within the agency, subject to §§ 713.211 through 713.222;

(6) Providing for the receipt, investigation, and disposition of general allegations by organizations or other third parties of discrimination in personnel matters within the agency which are unrelated to an individual complaint of discrimination subject to §§ 713.211 through 713.222, under procedures determined by the agency to be appropriate, with notification of decision to the party submitting the allegation.

(7) When authorized by the head of the agency making the decision under § 713.221 for the head of the agency on complaints of discrimination and ordering such corrective measures as he may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to

have engaged in a discriminatory practice; and

(8) When not authorized to make the decision for the head of the agency on complaints of discrimination, reviewing, at his discretion, the record on any complaint before the decision is made under § 713.221 and making such recommendations to the head of the agency or his designee as he considers desirable, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice;

(c) Publicize to its employees:

(1) The name and address of the Director of Equal Employment Opportunity;

(2) Where appropriate, the name and address of an Equal Employment Opportunity Officer; and

(3) The name and address of the Equal Employment Opportunity Counselor and the organizational units he serves; his availability to counsel an employee or qualified applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin; and the requirement that an employee or qualified applicant for employment must consult the Counselor as provided by § 713.213 about his allegation of discrimination because of race, color, religion, sex, or national origin before a complaint as provided by § 713.214 may be filed; and

(f) Make readily available to its employees a copy of its regulations issued to carry out its program of equal employment opportunity.

[34 F.R. 5368, Mar. 19, 1969; 34 F.R. 9795, June 25, 1969, as amended at 34 F.R. 14023, Sept. 4, 1969]

§ 713.205 Commission review and evaluation of agency program operations.

The Commission shall review and evaluate agency program operations periodically, obtain such reports as it deems necessary, and report to the President as appropriate on overall progress. When it finds that an agency's program operations are not in conformity with the policy set forth in § 713.202 and the regulations in this subpart, the Commission shall require improvement or corrective action to bring the agency's program operations into conformity with this policy and the regulations in this subpart. (E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R. 14024, Sept. 4, 1969]

AGENCY REGULATIONS FOR COMPLAINTS OF DISCRIMINATION

§ 713.211 General.

An agency shall insure that its regulations governing the procedures for the filing of complaints of discrimination because of race, color, religion, sex, or national origin comply with the requirements in §§ 713.212 through 713.214. [34 F.R. 5369, Mar. 19, 1969]

§ 713.212 Coverage.

(a) The agency shall insure that its regulations for the acceptance of complaints from any aggrieved applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin. A complaint filed by an organization on behalf of a person with his consent

(b) Sections 713.211 through 713.214 do not apply to the coverage of a general allegation of discrimination by an organization or third party which is the subject of an individual complaint of discrimination under §§ 713.211 through 713.214. [34 F.R. 5369, Mar. 19, 1969; 34 F.R. 14024, Sept. 4, 1969]

§ 713.213 Precomplaint.

(a) An agency shall insure that its regulations require a person who has been discriminated against because of race, color, religion, sex, or national origin to consult with an Equal Employment Opportunity Counselor before filing a complaint. The agency shall require the Equal Employment Opportunity Counselor to make an inquiry if he believes that the matter is of a serious nature; to seek a solution on an informal basis; to advise the aggrieved person concerning the matter; to keep a record of the activities so conducted; and, if necessary, to refer the matter to the Equal Employment Opportunity Commission. The agency shall require the Equal Employment Opportunity Counselor to submit a written report to the agency and the Equal Employment Opportunity Commission concerning the merits of the complaint. The Equal Employment Opportunity Counselor shall, insofar as practicable, conduct his final interview with the aggrieved person not later than 30 days after the date of the initial interview.

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§ 713.214

AGENCY REGULATIONS FOR PROCESSING
COMPLAINTS OF DISCRIMINATION

§ 713.211 General.

An agency shall insure that its regulations governing the processing of complaints of discrimination on grounds of race, color, religion, sex, or national origin comply with the principles and requirements in §§ 713.212 through 713.222. [34 F.R. 5369, Mar. 19, 1969]

§ 713.212 Coverage.

(a) The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin. A complaint may also be filed by an organization for the aggrieved person with his consent.

(b) Sections 713.211 through 713.222 do not apply to the consideration by an agency of a general allegation of discrimination by an organization or other third party which is unrelated to an individual complaint of discrimination subject to §§ 713.211 through 713.222.

[34 F.R. 5369, Mar. 19, 1969, as amended at 34 F.R. 14024, Sept. 4, 1969]

§ 713.213 Precomplaint processing.

(a) An agency shall require that an aggrieved person who believes that he has been discriminated against because of race, color, religion, sex, or national origin consult with an Equal Employment Opportunity Counselor when he wishes to resolve the matter. The agency shall require the Equal Employment Opportunity Counselor to make whatever inquiry he believes necessary into the matter; to seek a solution of the matter on an informal basis; to counsel the aggrieved person concerning the merits of the matter; to keep a record of his counseling activities so as to brief, periodically, the Equal Employment Opportunity Officer on those activities; and, when advised that a complaint of discrimination has been accepted from an aggrieved person, to submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the agency and the aggrieved person concerning the merits of the matter. The Equal Employment Opportunity Counselor shall, insofar as is practicable, conduct his final interview with the aggrieved person not later than 15 work-

days after the date on which the matter was called to his attention by the aggrieved person. The Equal Employment Opportunity Counselor shall advise the aggrieved person in the final interview of his right to file a complaint of discrimination with the organization's Equal Employment Opportunity Officer if the matter has not been resolved to his satisfaction and of the time limits governing the acceptance of a complaint in § 713.214. The Equal Employment Opportunity Counselor shall not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the agency has accepted a complaint of discrimination from him.

(b) The Equal Employment Opportunity Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties under this section.

[34 F.R. 5369, Mar. 19, 1969]

§ 713.214 Filing and presentation of complaint.

(a) *Time limits.* (1) An agency shall require that a complaint be submitted in writing by a complainant or his representative. The agency may accept the complaint for processing in accordance with this subpart only if—

(i) The complainant brought to the attention of the Equal Employment Opportunity Counselor the matter causing him to believe he had been discriminated against within 15 calendar days of the date of that matter or, if a personnel action, within 15 calendar days of its effective date, and

(ii) The complainant submitted his written complaint to the Equal Employment Opportunity Officer within 15 calendar days of the date of his final interview with the Equal Employment Opportunity Counselor.

(2) The agency shall extend the time limits in this section (i) when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the time limits, or (ii) for other reasons considered sufficient by the agency.

(b) *Presentation of complaint.* At any stage in the presentation of a complaint, including the counseling stage under § 713.213, the complainant shall be free from restraint, interference, coercion,

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§ 713.215

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discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the agency, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the agency and he designates another employee of the agency as his representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

[34 F.R. 5369, Mar. 19, 1969]

§ 713.215 Rejection or cancellation of complaint.

When the head of the agency, or his designee, decides to reject a complaint because it was not timely filed or because it is not within the purview of § 713.212 or to cancel a complaint because of a failure of the complainant to prosecute the complaint or because of a separation of the complainant which is not related to his complaint, he shall transmit the decision by letter to the complainant and his representative which shall inform the complainant of his right of appeal to the Commission if he believes that action improper and the time limit applicable thereto.

[34 F.R. 5369, Mar. 19, 1969]

§ 713.216 Investigation.

(a) The Equal Employment Opportunity Officer shall advise the Director of Equal Employment Opportunity of the acceptance of a complaint. The Director of Equal Employment Opportunity shall provide for the prompt investigation of the complaint. The person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The agency shall authorize the investigator to administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the or-

ganizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency—organized to show their relevance to the complaint or the general environment out of which the complaint rose.) If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information. The agency shall furnish the complainant or his representative a copy of the investigative file.

(b) The Director of Equal Employment Opportunity shall arrange to furnish to the person conducting the investigation a written authorization (1) to investigate all aspects of complaints of discrimination, (2) to require all employees of the agency to cooperate with him in the conduct of the investigation, and (3) to require employees of the agency having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

[34 F.R. 5369, Mar. 19, 1969, as amended at 34 F.R. 13656, Aug. 26, 1969]

§ 713.217 Adjustment of complaint and offer of hearing.

(a) The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investiga-

tive file. If an adjustment of the complaint is arrived at, the terms of adjustment shall be reduced to writing made part of the complaint file, copy of the terms of the adjustment provided the complainant.

(b) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing of the disposition thereof. In that notification the agency shall advise the complainant (i) his right to a hearing, with a subsequent decision under § 713.221, and (ii) if an appeal has been accepted under Subpart B of Part 771 of this chapter concerning the complaint which gave rise to the complaint. Subpart B of Part 771 of this chapter (2) his right to a decision under § 713.221 without a hearing. The agency shall allow the complainant 7 calendar days from receipt of the notice to decide whether or not he wishes a hearing.

(c) If the complainant fails to appear at the agency of his wishes within the time period prescribed in paragraph (b) of this section, the appropriate Employment Opportunity Officer shall adopt the disposition of the complaint proposed in the notice sent to the complainant under paragraph (b) of this section as the decision of the agency on the complaint when delegated authority to make a decision for the agency under those circumstances. When this is done, the Equal Employment Opportunity Officer shall transmit the decision by letter to the complainant and his representative which shall inform the complainant of his right of appeal to the Commission and the time limit applicable thereto. If the Employment Opportunity Officer does not issue a decision under this part of the complaint, together with the complaint file, shall be forwarded to the head of the agency, or his designee, for a decision under § 713.221.

[34 F.R. 5369, Mar. 19, 1969; 34 F.R. 13656, Aug. 26, 1969, as amended at 34 F.R. 15595, Oct. 26, 1969]

§ 713.218 Hearing.

(a) *Appeals examiner.* The hearing shall be held by an appeals examiner who must be an employee of the agency except when the agency is the complainant or the complaint arose in the Department of the District of Columbia or an agency which, by reason of

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§ 713.218

five file. If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing and made part of the complaint file, with a copy of the terms of the adjustment provided the complainant.

(b) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing of the proposed disposition thereof. In that notice, the agency shall advise the complainant of (1) his right to a hearing, with subsequent decision under § 713.221 by the head of the agency or his designee, under (i) this subpart or (ii) if an appeal has been accepted under Subpart B of Part 771 of this chapter concerning the action which gave rise to the complaint, under Subpart B of Part 771 of this chapter and (2) his right to a decision under § 713.221 without a hearing. The agency shall allow the complainant 7 calendar days from receipt of the notice to notify the agency whether or not he wishes to have a hearing.

(c) If the complainant fails to notify the agency of his wishes within the 7-day period prescribed in paragraph (b) of this section, the appropriate Equal Employment Opportunity Officer may adopt the disposition of the complaint proposed in the notice sent to the complainant under paragraph (b) of this section as the decision of the agency on the complaint when delegated the authority to make a decision for the head of the agency under those circumstances. When this is done, the Equal Employment Opportunity Officer shall transmit the decision by letter to the complainant and his representative which shall inform the complainant of his right of appeal to the Commission and the time limit applicable thereto. If the Equal Employment Opportunity Officer does not issue a decision under this paragraph, the complaint, together with the complaint file, shall be forwarded to the head of the agency, or his designee, for decision under § 713.221.

[34 F.R. 5369, Mar. 19, 1969; 34 F.R. 9795, June 25, 1969, as amended at 34 F.R. 13656, Aug. 26, 1969; 34 F.R. 15595, Oct. 8, 1969]

§ 713.218 Hearing.

(a) *Appeals examiner.* The hearing shall be held by an appeals examiner who must be an employee of another agency except when the agency in which the complaint arose is (1) the government of the District of Columbia or (2) an agency which, by reason of law, is

prevented from divulging information concerning the matter complained of to a person who has not received the security clearance required by that agency, in which event the agency shall arrange with the Commission for the selection of an impartial employee of the agency to serve as appeals examiner. (For purposes of this paragraph, the Department of Defense is considered to be a single agency.) The agency in which the complaint arose shall request the Commission to supply the name of an appeals examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The agency in which the complaint arose shall transmit the complaint file containing all the documents described in § 713.222 which have been acquired up to that point in the processing of the complaint, including the original copy of the investigative file (which shall be considered by the appeals examiner in making his recommended decision on the complaint), to the appeals examiner who shall review the complaint file to determine whether further investigation is needed before scheduling the hearing. When the appeals examiner determines that further investigation is needed, he shall remand the complaint to the Director of Equal Employment Opportunity for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearing. The requirements of § 713.216 apply to any further investigation by the agency on the complaint. The appeals examiner shall schedule the hearing for a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing is limited to persons determined by the appeals examiner to have a direct connection with the complaint.

(2) The appeals examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the appeals examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative, and the representatives of the agency at the hearing shall be given the opportunity to cross-examine witnesses

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shall appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of appeals examiner.* In addition to the other powers vested in the appeals examiner by the agency in accordance with this subpart, the agency shall authorize the appeals examiner to:

(1) Administer oaths or affirmations;
(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The appeals examiner shall request the agency to make available as a witness at the hearing an employee requested by the complainant when he determines that the testimony of the employee is necessary. He shall also request the appearance of any other employee whose testimony he desires to supplement the information in the investigative file. The appeals examiner shall give the complainant his reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. The agency shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the appeals examiner and it is administratively practicable to comply with the request. When it is not administratively practicable to comply with the request for a witness, the agency shall provide an explanation to the appeals examiner. If the explanation is inadequate, the appeals examiner shall so advise the agency and request it to make the employee available as a witness at the hearing. If the explanation is adequate, the appeals examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees of the agency shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony at the hearing or during the investigation under § 713.216.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the appeals examiner at the

hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he shall make the document available to the agency representative for reproduction.

(g) *Findings, analysis, and recommendations.* The appeals examiner shall transmit to the head of the agency or his designee (1) the complaint file (including the record of the hearing), (2) the findings and analysis of the appeals examiner with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose, and (3) the recommended decision of the appeals examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose. The appeals examiner shall notify the complainant of the date on which this was done. In addition, the appeals examiner shall transmit, by separate letter to the Director of Equal Employment Opportunity, whatever findings and recommendations he considers appropriate with respect to conditions in the agency having no bearing on the matter which gave rise to the complaint or the general environment out of which the complaint arose.

[34 F.R. 5370, Mar. 19, 1969, as amended at 34 F.R. 13657, Aug. 26, 1969]

§ 713.219 Relationship to other agency appellate procedures.

When a complainant makes a written allegation of discrimination on grounds of race, color, religion, sex, or national origin, in connection with an action that would otherwise be processed under the grievance or other internal appeal procedure of the agency, the agency may process the allegation of discrimination under its grievance or other internal appeal procedure when that procedure meets the principles and requirements in §§ 713.212 through 713.220 and the head of the agency, or his designee, makes the decision of the agency on the issue of discrimination. That decision on the issue of discrimination shall be incorporated in and become a part of the decision on the grievance or other internal appeal.

[34 F.R. 5370, Mar. 19, 1969]

§ 713.220 Avoidance of delay.

(a) The complaint shall be processed promptly. To this end, both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved except in unusual circumstances, within 60 calendar days after its receipt by the Equal Employment Opportunity Commission exclusive of time spent in the processing of the complaint by the appeals examiner under § 713.218, or (2) 90 calendar days after its receipt by the Equal Employment Opportunity Officer if the hearing is held under Subpart B of Part 771 of this chapter. When the complaint has not been resolved within the applicable limit, the complainant may file with the Commission a request for a review of the reasons for the delay. Upon receipt of this appeal, the Commission may require the agency to take special measures to insure the prompt processing of the complaint or may accept the agency's consideration under § 713.234.

(b) The head of the agency or his designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, if the complaint is not canceled for failure to prosecute, the complaint may be adjudicated if sufficient information for that is available.

(E.O. 11478; 3 CFR, 1969 Comp.)
5370, Mar. 19, 1969, as amended at 15595, Oct. 8, 1969]

§ 713.221 Decision by head of agency or designee.

(a) The head of the agency or his designee, shall make the decision of the agency on a complaint based on the information in the complaint file. The person designated to make the decision shall be fair, impartial, and objective. The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his representative. When there has been a hearing on the complaint, that letter shall also

(1) a copy of the findings, analysis, and recommended decision of the appeals examiner made under § 713.218; the transcript of the oral testimony of the complainant and the other oral statements at the hearing; and
(2) if the hearing was under Subpart B of Part 771 of this chapter, a copy of the report made by the hearing officer under that subpart and the decision on that hearing. When there has

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§ 713.220 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved, except in unusual circumstances, within (1) 60 calendar days after its receipt by the Equal Employment Opportunity Officer, exclusive of time spent in the processing of the complaint by the appeals examiner under § 713.218, or (2) 90 calendar days after its receipt by the Equal Employment Opportunity Officer when a hearing is held under Subpart B of Part 771 of this chapter. When the complaint has not been resolved within the applicable limit, the complainant may appeal to the Commission for a review of the reasons for the delay. Upon review of this appeal, the Commission may require the agency to take special measures to insure the prompt processing of the complaint or may accept the appeal for consideration under § 713.234.

(b) The head of the agency or his designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of canceling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R. 5370, Mar. 19, 1969, as amended at 34 F.R. 15595, Oct. 8, 1969]

§ 713.221 Decision by head of agency or designee.

(a) The head of the agency, or his designee, shall make the decision of the agency on a complaint based on information in the complaint file. A person designated to make the decision for the head of the agency shall be one who is fair, impartial, and objective. The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his representative. When there has been a hearing on the complaint, that letter shall also transmit (1) a copy of the findings, analysis, and recommended decision of the appeals examiner made under § 713.218(g) and the transcript of the oral testimony and other oral statements at the hearing or (2) if the hearing was under Subpart B of Part 771 of this chapter, a copy of the report made by the hearing committee under that subpart and the record of that hearing. When there has been a

hearing, the decision of the agency shall adopt, reject, or modify (1) the decision as recommended by the appeals examiner under § 713.218(g) or (2) if the hearing was under Subpart B of Part 771 of this chapter, whatever recommendations were made by the hearing committee under that subpart. When the decision of the agency is to reject or modify the recommended decision of the appeals examiner (or the recommendations made by the hearing committee under Subpart B of Part 771 of this chapter), the letter transmitting the decision of the agency shall set forth the reasons for rejection or modification. When there has been no hearing and nondiscision under § 713.217(c), the letter transmitting the decision of the agency shall set forth the findings, analysis, and decision of the head of the agency or his designee. The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to effect the resolution of the issues of discrimination and to promote the policy of equal opportunity.

(b) The agency shall advise the complainant of his right to appeal to the Commission the decision of the agency under this section on his complaint if he is not satisfied with it and of the time limit within which he must file the appeal.

[34 F.R. 5371, Mar. 19, 1969, as amended at 34 F.R. 13656, Aug. 26, 1969]

§ 713.222 Complaint file.

The agency shall establish a complaint file containing all documents pertinent to the complaint. The complaint file shall include copies of (a) the written report of the Equal Employment Opportunity Counselor under § 713.213 to the Equal Employment Opportunity Officer on whatever precomplaint counseling efforts were made with regard to the complainant's case, (b) the complaint, (c) the investigative file, (d) if the complaint is withdrawn by the complainant, a written statement of the complainant or his representative to that effect, (e) if adjustment of the complaint is arrived at under § 713.217, the written record of the terms of the adjustment, (f) if no adjustment of the complaint is arrived at under § 713.217, a copy of the letter notifying the complainant of the proposed disposition of the complaint and of his right to a hearing, (g) if decision is made under § 713.217(c), a copy of the letter to the complainant trans-

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§ 713.231

submitting that decision, (h) if a hearing was held, the record of the hearing, together with (1) the appeals examiner's findings, analysis, and recommended decision on the merits of the complaint under § 713.218(e) or (2) if the hearing was under Subpart B of Part 771 of this chapter, the report made by the hearing committee under that subpart, (i) if the Director of Equal Employment Opportunity is not the designee, the recommendations, if any, made by him to the head of the agency or his designee, and (j) if decision is made under § 713.221, a copy of the letter transmitting the decision of the head of the agency or his designee. The complaint file shall not contain any document that has not been made available to the complainant.

[34 F.R. 13657, Aug. 26, 1969]

APPEAL TO THE COMMISSION

§ 713.231 Entitlement.

(a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Commission the decision of the head of the agency, or his designee:

(1) To reject his complaint because (i) it was not timely filed, or (ii) it was not within the purview of the agency's regulations; or

(2) To cancel his complaint (i) because of the complainant's failure to prosecute his complaint, or (ii) because of the complainant's separation which is not related to his complaint; or

(3) On the merits of the complaint, under § 713.217(c) or § 713.221, but the decision does not resolve the complaint to the complainant's satisfaction.

(b) A complainant may not appeal to the Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

[34 F.R. 5371, Mar. 19, 1969]

§ 713.232 Where to appeal.

The complainant shall file his appeal in writing, either personally or by mail, with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

[34 F.R. 5371, Mar. 19, 1969]

§ 713.233 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time after receipt

of his agency's notice of final decision on his complaint but not later than 15 calendar days after receipt of that notice.

(b) The time limit in paragraph (a) of this section may be extended in the discretion of the Board of Appeals and Review, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

[34 F.R. 5371, Mar. 19, 1969]

§ 713.234 Appellate procedures.

The Board of Appeals and Review shall review the complaint file and all relevant written representations made to the board. The board may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary or have additional investigation conducted by Commission personnel. This subpart applies to any further investigation or rehearing resulting from a remand from the board. There is no right to a hearing before the board. The board shall issue a written decision setting forth its reasons for the decision and shall send copies thereof to the complainant, his designated representative, and the agency. When corrective action is ordered, the agency shall report promptly to the board that the corrective action has been taken. The decision of the board is final, and there is no further right to appeal.

[34 F.R. 5371, Mar. 19, 1969]

§ 713.235 Review by the Commissioners.

The Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(a) New and material evidence is available that was not readily available when the previous decision was issued;

(b) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(c) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

[34 F.R. 11537, July 12, 1969]

§ 713.236 Relationship to other

When the basis of the corrective action is discrimination because of race, religion, sex or national origin in an action which is otherwise appealable to the Commission, the case, including issue of discrimination, will be handled under the regulations appropriate to an appeal when the complainant timely appeal to the Commission in accordance with those regulations.

[34 F.R. 5371, Mar. 19, 1969]

REPORTS TO THE COMMISSION

§ 713.241 Reports to the Commission

Each agency shall report to the Commission information concerning complaint counseling and the disposition of complaints under this subpart at such times and in such manner as the Commission prescribes.

[34 F.R. 5371, Mar. 19, 1969]

Subpart C—Minority Group System

§ 713.301 Applicability.

(a) This subpart applies to all executive departments as defined in title 5, United States Code, and to executive agencies (other than the General Accounting Office) as defined in title 105 of title 5, United States Code, and to the employees thereof, employees paid from nonappropriated funds, and (2) to those portions of the legislative and judicial branches of the Federal Government and the District of Columbia in the competitive service positions in the competitive service to the employees in those positions.

(b) This subpart does not apply to aliens employed outside the United States.

[34 F.R. 5371, Mar. 19, 1969, as amended by 34 F.R. 14024, Sept. 4, 1969]

§ 713.302 Agency systems.

(a) Each agency shall establish a system which provides statistical employment information by race or origin.

(b) Data shall be collected on racial identification and shall be reported only in the form of gross statistics. An agency shall not collect or maintain information of the race or national origin of individual employees except in an automated data processing system used in accordance with stan-

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§ 713.236 Relationship to other appeals.

When the basis of the complaint of discrimination because of race, color, religion, sex or national origin involves an action which is otherwise appealable to the Commission, the case, including the issue of discrimination, will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal to the Commission in accordance with those regulations.

[34 F.R. 5371, Mar. 19, 1969]

REPORTS TO THE COMMISSION**§ 713.241 Reports to the Commission.**

Each agency shall report to the Commission information concerning pre-complaint counseling and the status and disposition of complaints under this subpart at such times and in such manner as the Commission prescribes.

[34 F.R. 5371, Mar. 19, 1969]

Subpart C—Minority Group Statistics System**§ 713.301 Applicability.**

(a) This subpart applies (1) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof, including employees paid from nonappropriated funds, and (2) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(b) This subpart does not apply to aliens employed outside the limits of the United States.

[34 F.R. 5371, Mar. 19, 1969, as amended at 34 F.R. 14024, Sept. 4, 1969]

§ 713.302 Agency systems.

(a) Each agency shall establish a system which provides statistical employment information by race or national origin.

(b) Data shall be collected only by visual identification and shall be disclosed only in the form of gross statistics. An agency shall not collect or maintain any information of the race or national origin of individual employees except when an automated data processing system is used in accordance with standards and

requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(c) Each system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used;

(3) The Commission shall review the operation of the agency system to insure adherence to Commission procedures and requirements. An agency may make an exception to the prescribed procedures and requirements only with the advance written approval of the Commission.

(d) The agency may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the equal employment opportunity program. An agency shall not establish a quota for the employment of persons on the basis of race, color, religion, sex, or national origin.

(e) An agency shall report to the Commission on employment by race and national origin in the form and at such times as the Commission may require.

[34 F.R. 5371, Mar. 19, 1969, as amended at 34 F.R. 14024, Sept. 4, 1969]

Subpart D—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap**§ 713.401 Equal opportunity without regard to politics, marital status, or physical handicap.**

(a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or marital status, nor shall he discriminate on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

(b) *In adverse actions and termination of probationers.* An agency may not take an adverse action against an employee covered by Part 752 of this chap-

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nor effect the termination of a probationer under Part 315 of this chapter, (1) for political reasons, except when required by statute, (2) that is based on discrimination because of marital status, or (3) for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

[24 F.R. 5372, Mar. 19, 1969]

PART 715—NONDISCIPLINARY SEPARATIONS, DEMOTIONS, AND FURLOUGHS

Subpart A [Reserved]

Subpart B—Voluntary Separations

Sec.

- 715.201 Applicability.
715.202 Resignation.

SOURCE: The provisions of this Part 715 appear at 33 F.R. 12482, Sept. 4, 1968, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Voluntary Separations

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 1302, 3301, 3302, 7301, E.O. 10577; 3 CFR 1954-1958 Comp., p. 218; E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306.

§ 715.201 Applicability.

This subpart applies to separation actions requested by employees in the executive departments and independent establishments of the Federal Government, including Government-owned or controlled corporations, and in those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service.

§ 715.202 Resignation.

(a) *General.* An employee is free to resign at any time, to set the effective date of his resignation, and to have his reasons for resigning entered in his official records.

(b) *Withdrawal of resignation.* A resignation is binding on an employee once he has submitted it, except that the agency, in its discretion, may permit the employee to withdraw his resignation at any time before it has become effective.

PART 731—SUITABILITY

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

Sec.

- 731.201 Reasons for disqualification.

Subpart C—Suitability Rating Actions

- 731.301 Jurisdiction.
731.302 Actions against employees by the Commission.
731.303 Debarment.

Subpart D—Appeals and Reemployment Eligibility

- 731.401 Reemployment eligibility of certain former Federal employees.

AUTHORITY: The provisions of this Part 731 issued under 5 U.S.C. 3301, 3302, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted.

SOURCE: The provisions of this Part 731 appear at 33 F.R. 12483, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

§ 731.201 Reasons for disqualification.

Subject to Subpart C of this part, the Commission may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee for any of the following reasons:

- (a) Dismissal from employment for delinquency or misconduct;
- (b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;
- (c) Intentional false statement or deception or fraud in examination or appointment;
- (d) Refusal to furnish testimony as required by § 5.3 of this chapter;
- (e) Habitual use of intoxicating beverages to excess;
- (f) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or
- (g) Any legal or other disqualification which makes the individual unfit for the service.

Subpart C—Suitability Rating

§ 731.301 Jurisdiction.

(a) *Appointments subject to investigation.* (1) In order to establish appointee's qualifications and for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by the Commission:

- (i) Promotion;
- (ii) Demotion;
- (iii) Reassignment;
- (iv) Conversion from career to career tenure;

(v) Appointment, or conversion to appointment, made by an agency of an employee of that agency who serving continuously with the agency for at least one year in one position in the competitive service at the time of appointment subject to investigation.

(vi) Reinstatement effected after separation from the date of separation from Federal civilian employment honorable separation from military service, provided the one-year investigation period applied to the previous appointment has expired.

(vii) Transfer, provided the subject-to-investigation period of the previous appointment has expired.

(2) Appointments are subject to investigation to continue the Commission's jurisdiction to investigate the qualifications and suitability of an appointee after appointment and to authorize the Commission to require removal of the appointee if disqualification is found in Federal employment. The investigation condition may be extended as requiring an employee to serve a new probationary or trial period extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition automatically terminates at the end of 1 year from the effective date of appointment in a case involving intent to deceive or deception or fraud in examination or appointment.

§ 731.302 Actions against employees by the Commission.

(a) For a period of 1 year from the effective date of an appointment to investigation under § 731.201, the Commission may instruct an

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| 2 | Comptroller | | |
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| <p>Remarks: Red: I talked at some length with a new member of the Executive Officers Group, Richard Clark McCurdy, who joined NASA about one month ago as Assistant Administrator for Administration. Prior to that time he had been President and Chief Executive Officer of Shell Oil and retired under its age-60 policy. [REDACTED] he was here with one of the Brookings Institution groups. He thought that session had been most successful. He seemed very sensible, intelligent, and well disposed toward the Agency.</p> <p style="text-align: right;">L.R. Houston</p> | | | |
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| 1 | Director of EEO 2E38 | | |
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| Remarks: Ruth: I thought this might be of some interest to you and also attach a couple of the fliers connected with the EEO problem. <div style="text-align: center;">LRHouston</div> | | | |
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